IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.1251 OF 2005
IN
WRIT PETITION NO.2855 OF 2004

Shri Nalawade R. Vinayak .... Applicant
Vs.
Shri Swami Vivekanand Shikshan
Sanstha, Kolhapur & Ors. .... Respondents

Shri Dilip Bodake for the Applicant.

CORAM: R.M.S. KHANDEPARKAR &
NARESH H. PATIL, JJ.

DATED: AUGUST 25, 2006

P.C:

1. By the present application the applicant/petitioner is seeking restoration of the Writ Petition No.2855 of 2004 which was dismissed for default. The application for restoration states that the Advocate for the petitioner could not remain present on the day when the Writ Petition was dismissed for default as he was busy in Pune Court. Merely because the Advocate is busy in another Court, that cannot be a justification for absence of the Advocate and on that ground to claim restoration of the matter. The law on this point is very clear, as comprised under Order 17 of the C.P.C.. Nothing prevented the Advocate for the petitioner from making the necessary arrangement to seek adjournment of the matter if at all he had any personal difficulty in

appearing before this Court on the day when the Writ Petition was dismissed for default. No explanation is forthcoming in that regard. Even otherwise, there is no much substance in the Writ Petition itself as virtually by the Writ Petition the petitioner is seeking for execution of the order already passed in another Writ Petition. Being so, there cannot be occasion for any prejudice being caused even to the party on account of dismissal of the Writ Petition.

2. For the reasons stated above, therefore, the application does not disclose sufficient cause for the absence of the Advocate on the day when the matter was dismissed for default and hence the application is rejected.

(Naresh H. Patil, J.) (R.M.S.Khandeparkar, J.)

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